

NO. 46532-9

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

VERNON PAUL VANCE,

Appellant,

v.

PIERCE COUNTY, a governmental subdivision of the State of
Washington; PIERCE COUNTY SHERIFF'S DEPARTMENT, a
subdivision of the State of Washington, et ux., et al.,,

Respondents.

**BRIEF OF RESPONDENTS WASHINGTON STATE
DEPARTMENT OF CORRECTIONS AND
WASHINGTON STATE PATROL**

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APPENDICES

Appendix A-1 through A-29, Former Statutes

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Vernon Vance's claims are based on events that took place 15 years before he finally decided to file suit against the Department of Corrections (DOC) and the Washington State Patrol (WSP).

After his release from prison in 1997, Vance was transferred to Washington from Colorado to serve a period of parole. The Colorado Department of Corrections sent documents to DOC showing that Vance held a family hostage in their home and forced the family's fifteen-year-old son into the trunk of a car, which Vance later abandoned in a field. Under Washington law, an offender convicted of kidnapping a minor was required to register as a kidnapping offender. Accordingly, DOC informed Vance of the registration requirement. Vance subsequently registered as a kidnapping offender with the Pierce County Sheriff's Office and, for over a decade, elected not to challenge his registration in court. Registration records were maintained by WSP as required by statute. WSP had no other role in this case.

The records Colorado sent to DOC in 1998 did not include Vance's plea agreement which reflected that he pled guilty only to kidnapping the boy's father, and thus was not subject to registration. Vance brought this action in 2013, alleging that DOC forced him to

register and that DOC and WSP defamed him by publishing his registration to the public.

On June 27, 2014, the Honorable Jerry Costello granted DOC's and WSP's motion for summary judgment as to all of Vance's claims. The trial court's dismissal should be affirmed for four reasons.

First, dismissal on summary judgment was proper because Vance's claims are time-barred. Vance's argument that some of his claims accrued in 2012 fails because it is undisputed that he knew of the facts giving rise to his claims in 1998. In any event, even the most generous application of the statutes of limitation would not save Vance's claims because he had no contact with DOC after 2005 and has not identified any tortious conduct on the part of WSP occurring within the statutory period. Apparently recognizing this problem, Vance argues that the trial court erred when it declined to toll the statute of limitations for over a decade. He makes the dubious assertion that DOC and WSP prevented him from seeking relief, an allegation that is flatly contradicted by his own deposition testimony. Moreover, Vance *did* seek relief as late as 2008 when he filed a tort claim against Pierce County, demonstrating that no defendant in this case prevented Vance from filing a lawsuit.

Second, dismissal on summary judgment was proper because, even if Vance's lawsuit was timely, and even if DOC had "required" Vance to

register, DOC is entitled to quasi-judicial immunity. Notifying Vance of the registration requirement was a quasi-judicial action pursuant to the plain language of RCW 9.94A.704(11) and governing case law.

Third, dismissal on summary judgment was proper because, even if the lawsuit was timely, and even if DOC or WSP had published Vance's registration information, both agencies are entitled to immunity under RCW 4.24.550(7) because there is no evidence of bad faith or gross negligence.

Fourth, dismissal was proper because, even if the lawsuit was timely and no immunity applied, Vance cannot establish a triable fact with regard to any of his tort claims asserted against DOC or WSP. DOC did not commit a tort by informing Vance of the registration requirement. WSP did not commit a tort by meeting its statutory duty of maintaining a database of registration information it received from local law enforcement agencies. Finally, Vance cannot meet his burden of providing evidence of any defamatory publication by DOC or WSP, and even there was such evidence, publication of registration information was privileged.

Accordingly, the trial court's order granting summary judgment should be affirmed.

II. COUNTER-STATEMENT OF THE ISSUES

A. Whether claims which were time-barred no later than 2001 were properly dismissed when the appellant failed to bring his lawsuit until 2012, no exception to the statutes of limitation applies, and there is no equitable basis to toll the statutes of limitation for over ten years.

B. Whether, even if the claims are timely, DOC is entitled to quasi-judicial immunity when the appellant's lawsuit is based upon an allegation that DOC "required" him to register, and the act of requiring registration as a condition of the terms of supervision is judicial in nature under RCW 9.94A.704(11).

C. Whether, even if the claims are timely and DOC or WSP had published the appellant's information, DOC and WSP are entitled to immunity under RCW 4.24.550(7) because there is no evidence of bad faith or gross negligence.

D. Whether, even if the claims are timely and no immunity applies, summary judgment is proper when the appellant has failed to meet his burden of establishing a triable issue of fact with respect to his claims.

III. COUNTER-STATEMENT OF THE FACTS

A. **The Registration Of Offenders Under The Community Protection Act Of 1990**

In 1990, the Legislature enacted the Community Protection Act (the Act) to “assist local law enforcement agencies’ efforts to protect their communities by requiring sex offenders to register with local law enforcement agencies.” Laws of 1990, ch. 3, § 401.¹

The Act required sex offenders to provide the local sheriff with his or her name, address, date and place of birth, place of employment, crime of conviction, date and place of conviction, and other information. Laws of 1990, ch. 3, § 402 (current version codified as RCW 9A.44.130); *In re Meyer*, 142 Wn.2d 608, 612-13, 16 P.3d 563 (2001) (describing registration process). The Act authorized public agencies to release certain information about sex offenders to the public. Laws of 1990, ch. 3, § 117 (current version codified as RCW 4.24.550).

In July 1997, the Act was expanded to require registration for offenders convicted of kidnapping where the victim was a minor and not the child of the offender. Laws of 1997, ch. 113, § 3 (current version codified as RCW 9A.44.130). Enacting this amendment, the Legislature found that “offenders who commit kidnapping offenses against minor children pose a substantial threat to the well-being of our communities.”

¹ Statutes which are not current are included in the Appendix.

Laws of 1997, ch. 113, § 1. Pertinent to this case, the registration requirement also applied to an offender paroled to Washington from another state who had a qualifying kidnapping offense. Former RCW 9A.44.130(3)(a)(v) (Laws of 1997, ch. 113, § 3).

B. DOC's Role Under The Community Protection Act Is To Notify Offenders Of The Registration Requirement

With respect to offenders paroled to Washington State, the Act tasked DOC with notifying kidnapping offenders of the registration requirement. DOC's function was essentially the same as a trial court's obligation to provide notification of the registration requirements to offenders at sentencing. *Compare* former RCW 10.01.200 (Laws of 1997, ch. 113, § 5) (“[t]he court shall provide written notification to any defendant charged with a sex offense or kidnapping offense of the registration requirements”) *with* former RCW 72.09.330(2) (Laws of 1997, ch. 113, § 8) (DOC “shall provide written notification to an inmate convicted of a sex offense or kidnapping offense of the registration requirements”).

The Act did not task DOC with actually registering paroled offenders nor did it authorize DOC to make the final determination regarding whether the offender must register. *Meyer*, 142 Wn.2d at 613 (local law enforcement agencies make the final determination as to

whether registration is required). Additionally, DOC was never involved in releasing registration information to the public. CP at 137, ¶ 6.

C. WSP's Role Under The Community Protection Act Is To Maintain Registration Records Received From Local Law Enforcement Agencies And To Send Legislative Updates To Registered Offenders

Since 1972, the Identification and Criminal History Section of WSP has been the central repository for criminal history record information for Washington State. *See* RCW 43.43.500; .700; .745; RCW 10.97.045. The Section maintains fingerprint records and criminal disposition information provided by courts and local law enforcement. CP at 171, ¶¶ 3-4. By law, WSP may disseminate criminal history information, including non-conviction data, to local law enforcement agencies for various purposes. RCW 10.97.050. Conviction data may be disseminated to the public without restriction. RCW 10.97.050(1).

When the Legislature enacted the Community Protection Act in 1990, it tasked WSP with maintaining a central registry of registered offender information which WSP receives from local law enforcement agencies. Laws of 1990, ch. 3, § 403 (current version codified as RCW 43.43.540); CP at 171, ¶ 3. WSP has never been involved in determining whether or not an offender is required to register as a sex or kidnapping offender. *E.g.*, RCW 43.43.745(4) (“[l]ocal law enforcement agencies shall require persons convicted of sex offenses to register

pursuant to RCW 9A.44.130”); *Meyer*, 142 Wn.2d at 613 (local law enforcement agencies make the final determination as to whether registration is required); *see also* CP at 173-74, ¶ 10.

In 1998, the Act was amended to require WSP to notify registered offenders of legislative changes to the registration requirements. Laws of 1998, ch. 139, § 2 (current version codified as RCW 9A.44.145). Amendments in 2002 required WSP to forward offender registration information received from local law enforcement agencies to the Washington State Association of Sheriffs and Police Chiefs (WASPC). Laws of 2002, ch. 118, § 2 (current version codified as RCW 43.43.540(1)). The Legislature tasked WASPC with creating and maintaining a statewide offender website once funding became available. Laws of 2002, ch. 118, § 1 (current version codified as RCW 4.24.550(5)). By comparison, WSP has never operated a website available to the public to search for registered offenders. CP at 173, ¶ 9.²

The WASPC registered offender website went live in 2004. CP at 173, ¶ 9. In 2008, WASPC contracted with a private vendor to facilitate a centralized database system and website that would allow members of the

² WSP does maintain criminal history record information (CHRI), which would include offender registration information and is available to the public for ten dollars. CP at 172-73, ¶ 8. However, there is no record of any member of the public requesting Vance’s CHRI record from WSP. CP at 172-73, ¶ 8. Moreover, after Vance was relieved of his duty to register, the CHRI record available to the public would not indicate prior registration. CP at 172-73, ¶ 8.

public to search for registered offenders. CP at 173, ¶ 9. While the public website originally drew its information from the WSP database, by March 2010 all of the information published on the website came directly from local law enforcement agencies. CP at 173, ¶ 9.

WSP does not have statutory authority to remove an offender's name from the registry in the event the offender were to contact WSP directly to challenge his or her duty to register. CP at 174, ¶ 11. Rather, WSP will update its records to indicate the offender has been relieved of registration when it receives a correction notice from either a local law enforcement agency or a court. *E.g.*, RCW 9A.44.141(3)(a)(ii)(b) (county sheriff shall request that WSP remove an offender's name from the registry when the sheriff determines the person should be relieved of the duty to register).

D. Seeking Relief From The Duty To Register

Any offender who has been required to register may seek relief from the duty to register by filing a petition in superior court. The Washington State Supreme Court found as follows:

We note such offenders are not without avenues of relief if the Department [of Corrections'] classification recommendation or the local law enforcement agency decision [requiring an offender to register] is arbitrary or capricious. These individuals may secure judicial review for arbitrary or capricious classification.

Meyer, 142 Wn.2d at 624 (citing RCW 7.16.040; Const. art. IV, §§ 4, 6); *State v. Ward*, 123 Wn.2d 488, 509-10, 869 P.2d 1062 (1994) (same); *In re Detention of Enright*, 131 Wn. App. 706, 713-14, 128 P.3d 1266 (2006) (“[a]fter release into the community, the offender may petition the superior court to change his classification and relieve him from the duty to register”); *see also* former RCW 9A.44.140 (Laws of 1990, ch. 3, § 408) (“[a]ny person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty”).

E. **Vance’s Parole To Washington State, His Registration As A Kidnapping Offender, And His Decision To Forego Both Challenging His Registration In Court And Filing A Lawsuit For Damages**

1. **Vance’s Parole To Washington State**

In 1997, after serving a prison sentence in Colorado, Vance requested that he be paroled to the state of Washington. In late 1997, the Colorado State Department of Corrections sent the Washington State Department of Corrections an Interstate Compact Pre-Transfer Investigation Request.³ CP at 135, ¶ 2. The paperwork submitted by Colorado described one of Vance’s underlying felony offenses as follows:

On April 13, 1989 Vance entered the home of the Pine Valley Bank President **and took his 15 year old**

³ Vance was paroled from Colorado to Washington under the Interstate Compact. *See* Laws of 1937, ch. 92, § 1 (currently RCW 9.95.270). The current Interstate Compact, RCW 9.94A.745, went into effect in 2001. Laws of 2001, ch. 35, § 2.

son hostage, demanding the Bank President to get \$25,000. The hostage was recovered unharmed.

CP at 135-36, ¶ 3; 151 (emphasis added).

The documents provided by Colorado also included a written statement by the victim, L.S., who was understandably terrified by Vance's actions. L.S. described Vance coming to his home and witnessing "the barrel of [Vance's] gun pointed at my mother and I [sic]." CP at 135-36, ¶ 3; 166-67. L.S. went on to describe how Vance forced him into the trunk of his parents' car, and how Vance drove the car to an area and abandoned the car with L.S. still in the trunk. CP at 135-36, ¶ 3; 166-67. The documents received from Colorado did not include Vance's plea agreement, in which he pled guilty to kidnapping L.S.'s father but not to kidnapping L.S. CP at 135, ¶ 3.⁴

Washington State approved the interstate transfer request and Vance arrived in Washington in early 1998. Shortly after arriving, Vance met with his Washington DOC Community Corrections Officer (CCO) Bill Frank. CCO Frank reviewed Vance's documents and determined that it was necessary to notify Vance that he would be required to register as a

⁴ Vance now claims that he was never involved in the 1989 home invasion but pled to kidnapping the father in order to secure a better sentence for a bank robbery he admits to committing prior to the home invasion. CP at 217 ll. 53:2-20. However, in his first deposition, Vance admitted he was accurately quoted in a 1989 presentence report where he describes how he went to the residence, "entered the house and had the family lay on the floor" and how he "had to take their family car and son for safe passage." CP at 258-259 ll. 241:21-242:13; 263.

kidnapping offender. CP at 136-37, ¶ 4. CCO Frank based this determination on the documents received from Colorado which indicated Vance had kidnapped a minor. CP at 136-37, ¶ 4. DOC did not register Vance as a kidnapping offender; it simply notified him of the requirement. CP at 136-37, ¶ 4; 199-201 ll. 23:8-25:1. Vance claims that he disputed the registration requirement and was told by CCO Frank that he could raise his concerns with the Pierce County Sheriff's Office. CP at 199-200 ll. 23:22-24:1.

On February 26, 1998, Vance registered as a kidnapping offender with the Pierce County Sheriff's Office. CP at 204-05 ll. 32:15-33:3; 219. The registration documents Vance signed informed him that he could petition the Thurston County Superior Court to seek relief from the duty to register. CP at 205 ll. 33:16-25; 222. Vance never filed such a petition, though he did seek legal advice beginning in 2000. CP at 206 ll. 34:13-15; 224.

The Pierce County Sheriff's Office forwarded the registration and fingerprint documents to the Washington State Patrol Identification Section. CP at 172, ¶ 7; 177-79. WSP subsequently entered the information into its database system as required by statute. CP at 172, ¶¶ 6-7.

2. Vance's Discharge From Parole, His Efforts To Challenge The Duty To Register, And His Decision To File A Tort Claim But Not To File A Lawsuit

On June 6, 2005, Vance was discharged from parole. CP at 137, ¶

5. This terminated Washington State DOC's supervision of Vance—more than seven years prior to Vance filing a tort claim against DOC. CP at 137, ¶ 5. DOC had no contact with Vance after his discharge from supervision. CP at 209 ll. 41:1-4.

In May 2008, while apparently at the Pierce County Sheriff's Office, Vance signed a document notifying him of legislative changes to the registration requirements. The document instructed him as follows:

If you wish to be relieved of the duty to register, you may petition the superior court of the county in which you were convicted, or in the case of...out-of-state convictions, the Thurston County Superior Court.

CP at 215 ll. 48:13-23; 243.

Around the same time, Vance raised concerns about the registration requirement with the Pierce County Sheriff's Office. CP at 69, ¶ 3.9. On May 14, 2008, Pierce County Sheriff's Office employee GayLynn Wilke sent an email to DOC employee Virginia Shamberg requesting Vance's DOC files, apparently to look into the issues raised by Vance. In the email, Ms. Wilke stated that if Vance "registered in error, I will need to send a correction to WSP." CP at 255.

In October 2008, Vance found his name listed on the Pierce County Sheriff's Department website as a kidnapping offender. CP at 214 ll. 46:11-18. But despite receiving the May 2008 notice specifically informing him of the procedure for challenging registration, Vance once again made the decision to not file a petition in superior court. He also elected not to initiate a civil action for damages against DOC, WSP, or Pierce County.

Instead, on October 25, 2008, Vance sent a letter to Pierce County Prosecuting Attorney Craig Adams demanding to be taken off the registry. CP at 216 ll. 49:7-10; 244-45. The letter purported to copy the Attorney General's Office, Washington Association of Sheriffs and Police Chiefs, and WSP.⁵ Aside from copying this letter to WSP, Vance never contacted anyone at WSP regarding this issue. CP at 211 ll. 43:21-25. At no time did anyone at WSP tell Vance that he had a duty to register. CP at 216 ll. 49:11-16.

On November 13, 2008, Vance for the first time pursued civil damages, filing a tort claim against Pierce County. CP at 213 ll. 45:2-8; 226-36. The tort claim is a prerequisite for bringing suit. RCW 4.96.020. In the tort claim, Vance demanded damages for being erroneously registered as a kidnapping offender. CP at 213 ll. 45:2-8; 226-36. The

⁵ WSP has no record of receiving this letter. CP at 174, ¶ 12.

tort claim apparently was not resolved and Vance chose not to follow up with a lawsuit against Pierce County at that time. Moreover, there is no record of him filing a tort claim with the State of Washington until **over four years later**, on January 29, 2013. CP at 193, ¶ 3.

On February 11, 2012, Pierce County charged Vance with failing to register as a kidnapping offender. CP at 70-71, ¶ 3.19. On April 24, 2012, the charge was dismissed after a Pierce County deputy prosecutor recognized that Vance should not have had to register because, while he was charged with kidnapping a minor, he only pled to kidnapping an adult. CP at 71, ¶ 3.21-3.22. After receiving the court order, WSP promptly removed Vance's name as a registered kidnapping offender from its database. CP at 175, ¶ 13.

3. Vance Filed This Lawsuit Over A Decade After He First Registered

On December 3, 2012, Vance filed this lawsuit naming Pierce County and its employees, but did not properly serve DOC or WSP. On January 29, 2013, he filed a tort claim against DOC but did not name WSP. CP at 193, ¶ 3. On September 13, 2013, Vance properly served DOC and WSP with the Second Amended Complaint. He asserts the following causes of action against DOC and WSP, which are all based on the theory that DOC required him to register and that DOC and WSP “broadcasted” his registration to the public: (1) defamation; (2) gross

negligence and deliberate indifference; (3) negligent infliction of emotional distress; (4) negligence; (5) outrage; and (6) invasion of privacy. CP at 72-77, ¶ 4.1-4.35.⁶

F. The Trial Court Order Granting DOC's and WSP's Motion For Summary Judgment

On June 27, 2014, the Honorable Jerry Costello granted DOC's and WSP's motion for summary judgment as well as co-Respondent Pierce County's motion for summary judgment, dismissing Vance's lawsuit in its entirety. The trial court concluded as follows:

The Court finds that the Statute of Limitations applies in this instance to most claims. Immunity applies to these claims in one form or another. The Court declines to apply equitable tolling. I am relying upon the arguments and authorities found in these briefs. I am granting the motions.

RP at 26:11-16.

Vance filed a timely appeal of the trial court order dismissing his case.

⁶ Vance acknowledges that the other claims asserted in his Second Amended Complaint (false arrest, malicious prosecution, and negligent supervision, hiring, and retention) only apply to Pierce County. Br. Appellant at 9; CP at 248. Additionally, while Vance asserts a "deliberate indifference" claim, he confirmed that he is not asserting a claim under the Eighth Amendment of the United States Constitution after this case was removed to federal court before it was remanded to Pierce County Superior Court.

IV. STANDARD OF REVIEW

When reviewing a motion for summary judgment, the appellate court conducts the same inquiry as the trial court. *Howland v. Grout*, 123 Wn. App. 6, 9, 94 P.3d 332 (2004).

Summary judgment is appropriate where the evidence, viewed in the light most favorable to the nonmoving party, demonstrates there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56; *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). An issue of material fact is one upon which the outcome of the litigation depends. *Atherton Condo Ass'n v. Blume Development Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

To defeat summary judgment, the non-moving party must come forward with specific, admissible evidence to rebut the moving party's contentions and support all necessary elements of the non-moving party's claims. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). If the non-moving party fails to establish the existence of a necessary element to that party's case, summary judgment must be granted. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

In such situation, there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.

Id. (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

Argumentative assertions, unsupported speculation, suspicions, beliefs and conclusions, as well as inadmissible evidence that unresolved factual issues remain are insufficient to create a genuine issue of fact. *White*, 131 Wn.2d at 9; *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Where reasonable minds can reach only one conclusion based on the facts, summary judgment should be granted. *LaMon v. Butler*, 112 Wn.2d 193, 199 n.5, 770 P.2d 1027 (1989).

V. ARGUMENT

The trial court order granting summary judgment should be affirmed because (A) the claims are time-barred, no exception to the statute of limitations applies, and there is no equitable basis to toll the claims for over ten years, (B) even if the claims were timely, and even if DOC “required” Vance to register, DOC is entitled to quasi-judicial immunity, (C) even if the claims were timely, and even if DOC and WSP published Vance’s registration information, the agencies are entitled to

immunity under RCW 4.24.550(7), and (D) even if the Court reached the merits of Vance's claims, dismissal is proper because he failed to establish any triable issue of fact.

A. The Trial Court Order Dismissing Vance's Claims Should Be Affirmed Because The Statute Of Limitations Expired Over A Decade Before The Lawsuit Was Filed, No Exception To The Statute Of Limitations Applies, And There Is No Basis For Equitable Tolling

The trial court properly concluded that Vance's claims against DOC and WSP are time-barred. First, the claims are untimely because there is no evidence of tortious conduct occurring within the applicable statutory period for each claim. Second, the trial court properly declined to equitably toll the statute of limitations because there was no basis to grant this extraordinary relief.

1. Vance's Claims Are Time-Barred And No Exception To The Statute Of Limitations Applies

Statutes of limitation are not mere technicalities, but are fundamental to a well-ordered judicial system. *Bd. of Regents Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 487, 100 S. Ct. 1790, 64 L. Ed. 2d 440 (1980). Under Washington law, untimely actions must be dismissed. RCW 4.16.005.

The remedial goal of the justice system requires that "when an adult person has a justiciable grievance, [that person] usually knows it and the law affords [the person] ample opportunity to assert it in the courts."

Matter of Estates of Hibbard, 118 Wn.2d 737, 745, 826 P.2d 690 (1992). (citation omitted). That goal is balanced by the recognition that compelling a defendant to answer a stale claim is in itself a substantial wrong. *Id.* As the *Hibbard* Court recognized, stale claims may be spurious and generally rely on untrustworthy evidence. *Id.* Society benefits when it can be assured that a time comes when potential defendants are freed from the threat of litigation. *Id.*

Ordinarily, a cause of action accrues, and the statute of limitations begins to run at the time the challenged act or omission occurred. *Gevaart v. Metco Constr.*, 111 Wn.2d 499, 501, 760 P.2d 348 (1988). A limited exception, known as the “discovery rule,” tolls the statute of limitations when a plaintiff could not have immediately known of his or her injuries. *Hibbard*, 118 Wn.2d at 750; *see also 1000 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 579, 146 P.3d 423 (2006) (collecting cases where discovery rule has been properly applied, such as cases where a patient later finds out that a medical instrument was left in the body or when a homeowner learns of a latent construction defect).

Under the discovery rule, when a plaintiff reasonably suspects that a wrongful act has occurred, she is deemed to be on notice that legal action must be taken and must from that point forward exercise due diligence to learn of any further facts necessary to initiate a lawsuit. *1000*

Virginia Ltd. Partnership, 158 Wn.2d at 581. “The action accrues when the plaintiff knows or should know the relevant facts, whether or not the plaintiff also knows that these facts are enough to establish a legal cause of action.” *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992) (emphasis added). If the rule were otherwise, “the discovery rule would postpone accrual in every case until the plaintiff consults an attorney.” *Id.*

At all times, the plaintiff bears the burden of proving that the facts constituting the claim were not and could not have been discovered by due diligence within the applicable limitations period. *Clare v. Saberhagen Holdings, Inc.*, 129 Wn. App. 599, 603, 123 P.3d 465 (2005). Neither uncertainty about the amount or character of damages nor the difficulty of proving them will toll the statute of limitations. *Steele v. Organon, Inc.*, 43 Wn. App. 230, 234, 716 P.2d 920 (1986). When reasonable minds cannot differ that the plaintiff knew of the facts giving rise to a cause of action, summary judgment is appropriate. *Allen*, 118 Wn.2d at 760.

To calculate the statutory period, a lawsuit is deemed commenced once the complaint is filed or summons is served. RCW 4.16.170. The filing of a tort claim tolls this period for up to 65 days. RCW 4.92.110. In this case, the statutes of limitations for Vance’s claims are either two or three years. RCW 4.16.080(2) (providing a three-year limitation period

for personal injury actions); RCW 4.16.100 (two-year period for defamation and invasion of privacy).

Here, the incident giving rise to Vance's claims against DOC and WSP occurred on February 26, 1998, when he registered as a kidnapping offender after DOC informed him of the registration requirement. CP at 67-68, ¶ 3.3. At the time of his registration, Vance knew of the facts giving rise to his claim—i.e., that he had not been convicted of kidnapping a minor and that the fact of his registration could be shared with the public. CP at 201-202 ll. 25:16-26:15; former RCW 4.24.550(1) (Laws of 1990, ch. 3, § 117). Indeed, Vance concedes that he disputed his registration in 1998, that he sought legal advice beginning in 2000, and that he even filed a tort claim in 2008. CP at 68, ¶ 3.5; 224; 226-36. It makes no difference that Vance was ultimately charged with failing to register in 2012, because the incident giving rise to his cause of action occurred in 1998. *Steele*, 43 Wn. App. at 234 (uncertainty about the amount or character of damages does not toll the statute of limitations).

Accordingly, the discovery rule is inapplicable. And having begun to run in 1998 upon Vance's registration, the statute of limitations expired on February 26, 2000, for his defamation and invasion of privacy claims and February 26, 2001, for his remaining claims, long before he filed this lawsuit.

With respect to his negligence, gross negligence and deliberate indifference, negligent infliction of emotional distress, and outrage claims, Vance apparently concedes that neither DOC nor WSP engaged in any tortious conduct within the statutory period—the three year period prior to him commencing this lawsuit. Brief of Appellant (Br. Appellant) at 39.⁷ As he must; DOC had no contact with Vance after 2005 and WSP had no contact with Vance at any time except for a letter which Vance alleges to have sent WSP as a “cc” in 2008. CP at 209 ll. 41:1-4; 216 ll. 49:7-16.

Vance contends, however, that dismissal of the defamation and invasion of privacy claims was improper because it “appears” that DOC and WSP engaged in tortious conduct within that statutory period. Br. Appellant at 39. This Court should affirm dismissal of these claims because, as discussed below, Vance fails to meet his burden of identifying tortious activity taking place within the two-year statutory period.⁸

⁷ Vance’s argument that the statute of limitations for all of his claims should have been equitably tolled is addressed in the subsequent section, *infra* at 27-35.

⁸ Vance also argues that the “continuing torts” theory should apply, but only as to his claims against Pierce County. Br. Appellant at 43-44. He apparently recognizes that this theory could not apply to his claims against DOC or WSP, since neither agency had any contact with him during the statutory period.

a. Vance Fails To Present Any Evidence To Support His Claim That DOC Defamed Or Invaded His Privacy During The Statutory Period

Vance has presented no evidence in support of his claim that DOC defamed him or invaded his privacy during the two-year statutory period prior to the filing of his lawsuit. He cannot meet his burden by attempting to lump DOC in with the other defendants in this case. *E.g.*, Br. Appellant at 40 (alleging there is an issue of fact as to his claims against “State Defendants” but offering no evidence of tortious conduct on the part of DOC).

It is undisputed that DOC had no contact with Vance since his discharge from supervision in 2005. CP at 209 ll. 41:1-4. It is also undisputed that DOC has never published information regarding Vance’s registration as a kidnapping offender at any time, and certainly not during the statutory period. CP at 207-08 ll. 39:10-40:3; 137, ¶ 6. Accordingly, dismissal of these claims as time-barred was proper.

b. Vance’s Defamation And Invasion Of Privacy Claims Against WSP Are Time-Barred Because There Is No Evidence Of Any Publication During The Statutory Period And Because, Even If WSP Had Published Vance’s Information, The Information Was True

Vance argues that his defamation and invasion of privacy claims are timely because WSP updated its database to reflect (1) Vance’s failure

to update his registration address with the Pierce County Sheriff's Office in December 2011 and (2) Vance's status as a previously registered offender in April 2012. Br. Appellant at 43. This argument fails because there is no evidence of this information being published to a third party and, even if it was published, the information was true.

A plaintiff must establish four essential elements to support a defamation claim: falsity, an unprivileged communication, fault, and damages. *Herron v. KING Broadcasting Co.*, 109 Wn.2d 514, 521-22, 746 P.2d 295 (1987), *clarified on reh'g*, 112 Wn.2d 762, 776 P.2d 98 (1989). The plaintiff carries the burden of establishing that a false statement was published to a third party. *See id.* at 521.

An invasion of privacy by publication claim requires a showing of a publication of highly offensive material. *Fisher v. State ex rel. Dep't of Health*, 125 Wn. App. 869, 878-80, 106 P.3d 836 (2005). The communication must be to the public at large; publication to a single person or small group does not qualify. *Id.*

Here, Vance has not identified any statement which WSP published to a third party. Instead, he misapplies the summary judgment standard and attempts to shift his burden to WSP, arguing WSP has not

shown that a publication was *not* made.⁹ Br. Appellant at 41. WSP has no record of Vance's registration information having been published. CP at 172-73, ¶ 8. To the extent Vance's claim is based upon the publication of his offender profile online, WSP does not operate the registered offender website. CP at 173, ¶ 9. Furthermore, the agency which does maintain the website—the Washington Association of Police Chiefs and Sheriffs—has not drawn its information from WSP since March 2010, which is outside the statutory period. CP at 173, ¶ 9. Thus, since Vance has not met his burden of presenting evidence of any publication during the statutory period, the trial court properly dismissed his defamation and invasion of privacy claims as time-barred. *LaMon v. City of Westport*, 44 Wn. App. 664, 668-69, 723 P.2d 470 (1986) (finding no publication where alleged defamatory document was held at the library but there was no evidence of anyone actually viewing the document, and disposing of plaintiff's defamation and invasion of privacy claims); *see also White*, 131 Wn.2d at 9 (the non-moving party cannot avoid summary judgment by making unsupported or speculative assertions).

⁹ Vance suggests information was not credible and/or missing from the declarations provided by DOC and WSP in its motion for summary judgment. *E.g.*, Br. Appellant at 17, 40-41. DOC and WSP deny this is the case. It is noteworthy that Vance made the decision not to take any depositions in this case, and has not otherwise provided any evidence to support his claims.

Finally, even if the updates to WSP's database had been published to a third party, Vance has not alleged the updates to be false. Nor can he; it is true that Vance did not update his address with Pierce County and it is true that he was formerly registered as a kidnapping offender. WSP was simply maintaining information it received from the Pierce County Sheriff's Office. As a result, since there is no evidence of a false statement during the statutory period, Vance's defamation claim is also time-barred on that basis.

2. The Trial Court Properly Declined To Equitably Toll Vance's Claims For Over Ten Years Because Neither DOC Nor WSP Did Anything To Interfere With Vance's Ability to File A Lawsuit

Equitable tolling of the statute of limitations is not favored. *Peterson v. Groves*, 111 Wn. App. 306, 310, 44 P.3d 894 (2002); *see also Rekhter v. Dep't of Soc. & Health Servs.*, 180 Wn.2d 102, 150, 323 P.3d 1036 (2014) (Stephens, dissent) (equitable tolling should be applied sparingly because it overrides explicit statutory periods established by the Legislature).

"The predicates for equitable tolling are bad faith, deception, or false assurances by the defendant and the exercise of diligence by the plaintiff." *Trotzer v. Vig*, 149 Wn. App. 594, 606-07, 203 P.3d 1056 (2009) (quoting *Millay v. Cam*, 135 Wn.2d 193, 206, 955 P.2d 791 (1998)). Equitable

tolling is appropriate when a defendant has “fraudulently or inequitably invited a plaintiff to delay commencing suit until the applicable statute of limitations has expired.” *Peterson*, 111 Wn. App. at 310 (citation omitted). The party asserting that equitable tolling should apply bears the burden of proof. *Trotzer*, 149 Wn. App. at 606-07. Although the standard of review on appeal is de novo, reviewing courts should give deference to the trial court’s factual determinations. *Id.*

Here, the trial court was correct in declining to toll the statute of limitations. Equitable tolling is an extraordinary remedy and Vance offers no plausible basis to extend the statute of limitations more than ten years beyond its expiration. Specifically, the trial court correctly declined to grant equitable tolling because (a) Vance admitted that no defendant did anything to prevent him from challenging his registration or from filing a lawsuit, (b) Vance was repeatedly advised of the process for challenging registration and chose not to take action, (c) even if equitable tolling was applied, Vance’s claims would still be time-barred, and (d) an extension of the statute of limitations for over ten years would greatly prejudice DOC and WSP.

a. There Is No Basis For Equitable Tolling Because Vance Admitted During His Deposition That Neither DOC Nor WSP Interfered With His Ability To Bring Suit

In his opening brief, Vance argues that equitable tolling is warranted because DOC and WSP threatened him and misled him about his options for challenging his registration as a kidnapper and, in doing so, prevented him from bringing a timely civil lawsuit. Br. Appellant at 33. This Court should not consider this argument because it contradicts his own sworn testimony. CR 56(e) (a party cannot defeat summary judgment by relying on assertions unsupported by admissible evidence); *see also Selvig v. Caryl*, 97 Wn. App. 220, 225, 983 P.2d 1141 (1999) (“genuine issues of material fact cannot be created by a declarant who submits an affidavit that contradicts his or her own prior deposition testimony”).

Despite his arguments on appeal, in his deposition Vance admitted that no defendant in this case interfered with his ability to challenge his registration, much less his ability to bring a lawsuit for damages. CP at 208 ll. 40:19-22; 212, ll. 44:3-6. Further, Vance acknowledged that he did not even have any personal contact with WSP. CP at 212 ll. 44:11-13. There is simply no factual basis for Vance’s argument that DOC and WSP impeded his ability to bring suit.

Vance's argument that DOC "misled him about his avenue for relief" from registration is also flatly contradicted by his deposition testimony as well as his discovery responses. In fact, Vance testified that DOC advised him in 1998 that he could dispute his registration with the Pierce County Sheriff's Office. CP at 199-200 ll. 23:22-24:9; 357. He also testified that DOC told him that it did not have authority to relieve him of a duty to register. CP at 208 ll. 40:13-18. Since Vance argues that Pierce County had a statutory duty to investigate his claims, Br. Appellant at 35, he must concede that DOC did not mislead him about his options. Additionally, Vance admitted that he was repeatedly told by Pierce County Sheriff's Office that he could challenge his registration in court, *e.g.* CP at 243, an avenue of relief Vance never attempted.

Moreover, the conflicting arguments made in Vance's opening brief further establish that the trial court correctly applied the statute of limitations. On the one hand, Vance maintains that equitable tolling is appropriate because DOC and WSP prevented him from seeking relief by threatening him. Br. Appellant at 33. But on the other hand, Vance argues that he acted diligently (in seeking relief) by consulting attorneys and, presumably, by even filing a tort claim against Pierce County in 2008, and therefore is entitled to equitable relief. Br. Appellant at 36-37. These contradictory positions cannot be reconciled; clearly, the supposed

“threats” did nothing to prevent Vance from pursuing a claim for damages, as evidenced by his 2008 tort claim. Vance simply chose to sit on his claims until 2012 when he finally decided to file a lawsuit.

In sum, Vance’s decision to wait until 2012 to file a lawsuit was in no way influenced by DOC or WSP—or Pierce County for that matter—and thus, there is no basis for equitable tolling.

b. There Is No Basis For Equitable Tolling Because Vance Elected To Forego Challenging His Registration In Court And Decided Not To File A Lawsuit For Damages Against DOC and WSP Until 2013

Equitable tolling is also not warranted because Vance had been told since 1998 that he could challenge his registration in court but failed to take action. Ignoring the plain language of the registration statute as well as Washington State Supreme Court precedent, Vance now argues that equitable tolling is appropriate because he lacked standing to seek relief in court. Br. Appellant at 22-24; 33-34.

The plain language of the controlling statute at the time of Vance’s registration stated, “any person having a duty to register under RCW 9A.44.130 may petition the superior court to be relieved of that duty.” Former RCW 9A.44.140 (Laws of 1990, ch. 3, § 408).¹⁰ Vance

¹⁰ The statutes cited by Vance, Br. Appellant at 23-24, were not in effect at the time Vance registered. *E.g.* RCW 9A.44.142 (effective 2010). Thus, even if the statutes supported Vance’s claim that he had no means to challenge his registration in court,

makes the speculative and circular argument that, since he actually did not have a duty to register based on his underlying conviction, a trial court would have found that he lacked standing to challenge his registration had he filed a petition. This is akin to arguing that a driver cannot challenge a license revocation if the revocation was premised on erroneous facts. Vance's interpretation is incorrect, as it would preclude judicial review in countless situations.

More importantly, Vance fails to address Washington State Supreme Court precedent which makes clear that an offender may seek judicial review of a DOC recommendation which results in registration. *Meyer*, 142 Wn.2d at 624. As the *Meyer* Court explained, if an agency makes an arbitrary or capricious classification decision which results in a registration requirement, the offender may seek relief by seeking a writ of review under RCW 7.16.040. *Meyer*, 142 Wn.2d at 624; *see also Enright*, 131 Wn. App. at 713-14 (“[a]fter release into the community, the offender may petition the superior court to change his classification and relieve him from the duty to register”). Vance simply chose not to pursue such relief. If Vance now feels he received inadequate legal advice when he consulted attorneys in 2000, that may be a basis for a legal malpractice claim, but it has no bearing on his claims against DOC and WSP.

which they do not, his argument fails because the controlling statute at the time of Vance's registration plainly allowed him to challenge registration in court.

Finally, even if Vance was correct that he had no means of challenging his registration, he fails to explain why he could not have earlier sought *civil damages* against WSP or DOC. Vance must concede that there was no procedural impediment to bringing a tort action at an earlier date. Indeed, he *did* seek civil damages as evidenced by his 2008 tort claim.

Accordingly, equitable tolling is not appropriate because Vance had multiple opportunities not only to challenge his registration, but also to file a civil action against DOC and WSP.

c. Even If Equitable Tolling Had Been Applied, Vance's Claims Are Still Time-Barred

Even if it were true that DOC impeded Vance's efforts to litigate his claims, equitable tolling still would not save his claims. The basis for Vance's argument is that DOC allegedly intimidated him by threatening him with incarceration during his period of parole, thereby discouraging him from bringing suit. But even if this claim had factual support, DOC's threat was neutralized when Vance was discharged from parole in 2005. Since Vance had no contact with DOC after 2005, the latest the statute of limitations could conceivably be tolled is 2008, well before he filed his lawsuit.

With respect to WSP, as discussed earlier, Vance acknowledged that no one at WSP personally contacted him, much less interfered with his ability to file a lawsuit. Thus, there would be no basis to toll his claims against WSP for any period of time.

d. Tolling The Statute Of Limitations For Over Ten Years Would Unfairly Prejudice DOC And WSP

Lastly, DOC and WSP would be unfairly prejudiced by a ten-year tolling of the statute of limitations. The statute of limitations is not a mere technicality and courts have long held that it is unfair to subject parties to stale claims. *See* Sec. V(A)(1) *supra* at 19-21. This is especially true in this case, where Vance waited over a decade to file his lawsuit.

Additionally, despite initially admitting to kidnapping a minor in the late 1990s, Vance now denies having committed this crime. He now even denies kidnapping the father, even though he pled guilty to that offense. CP at 258-59 ll. 241:21-242:13; 263. Thus, if this matter goes to trial, Defendants will call Vance's victims and Colorado law enforcement officers as witnesses to rebut Vance's expected claim that he was never involved in a kidnapping crime in the first place. Clearly, attempting to call these witnesses more than 20 years after Vance's crime will cause prejudice, not to mention DOC and WSP witnesses who have not had any involvement in this case for years.

In sum, this case does not involve the type of extraordinary circumstances as cases cited in Vance's brief. Unlike the plaintiffs in *Littlefair*¹¹ and *Thompson*,¹² Vance knew of his cause of action for over ten years, nothing prevented Vance from challenging his registration, and nothing prevented him from filing a civil suit for damages. The trial court correctly applied the statute of limitations and properly dismissed Vance's claims as time-barred.

B. Even If Vance's Claims Were Timely, And Even If DOC "Required" Him To Register, The Trial Court Properly Granted Summary Judgment Because DOC Is Entitled To Quasi-Judicial Immunity

Vance's claims against DOC are based on an allegation that the agency required him to register as a kidnapping offender.¹³ In support of this argument, Vance points out that his interstate probation transfer paperwork required him to abide by "any written or verbal instructions issued by a [DOC] Community Corrections Officer." Br. Appellant at 33. In other words, Vance contends that when DOC informed him of the registration requirement, it imposed a condition of parole which required him to register as a kidnapping offender. CP at 203 ll. 27:15-17. Vance's

¹¹ *State v. Littlefair*, 112 Wn. App. 749, 51 P.3d 116 (2002).

¹² *Thompson v. Wilson*, 142 Wn. App. 803, 175 P.3d 1149 (2008).

¹³ Vance's allegation that he was required to register could not apply to WSP. There is no evidence which would support a claim that WSP required Vance to register, and even if there was such evidence, WSP would be entitled to quasi-judicial immunity because requiring registration is a judicial function as discussed in this section.

claims were correctly dismissed because even if DOC had required registration, it is entitled to quasi-judicial immunity for doing so.

The Legislature has made clear its intention that DOC be entitled to immunity when engaged in the quasi-judicial activities of setting, modifying, and enforcing the conditions of community custody. RCW 9.94A.704(11)¹⁴; *see also Taggart v. State*, 118 Wn.2d 195, 213, 822 P.2d 243 (1992) (DOC is entitled to immunity for quasi-judicial conduct).

Contrary to Vance's arguments, DOC's action of notifying Vance meets test set out in *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 829 P.2d 746 (1992). Under this test, three factors are considered when assessing whether a government agency is entitled to quasi-judicial immunity: (1) whether the function at issue is analogous to that performed by a court; (2) whether policy reasons support immunity; and (3) whether the plaintiff had sufficient safeguards to mitigate against the harshness of immunity. *Lutheran*, 119 Wn.2d at 106.

First, the judicial nature of DOC notifying an offender of a registration requirement is plainly apparent. In fact, the respective statutes setting out a sentencing court's role and DOC's role in notifying an

¹⁴ This statute became effective in 2008 and thus was not in existence at the time Vance was discharged from parole in 2005. However, the immunity should apply in the event that Vance's claim is considered timely.

offender of a registration requirement are nearly identical. *Compare* former RCW 10.01.200 (Laws of 1997, ch. 113, § 5) (“[t]he court shall provide written notification to any defendant charged with a sex offense or kidnapping offense of the registration requirements”) *with* former RCW 72.09.330(2) (Laws of 1997, ch. 113, § 8) (DOC “shall provide written notification to an inmate convicted of a sex offense or kidnapping offense of the registration requirements”); *see also Enright*, 131 Wn. App. at 716 (when DOC or local enforcement establish a risk level classification giving rise to a duty to register, the respective agency is performing a judicial function).

Second, the same reasons which favor providing a judge with immunity for decisions related to notifying an offender of the registration requirement applies to DOC. Like judges, DOC officials should not be burdened with the fear of litigation when making the decision regarding notifying an offender that he or she is required to register.

Third, there are sufficient safeguards which protected Vance. As discussed earlier, from the outset, Vance was notified of the procedure to challenge registration.

Notably, the current statutory framework concerning the removal of offenders from the kidnapping offender registry supports the application of immunity in this case. The Legislature has provided

absolute immunity for an agency's "failure to remove or request removal" of an offender from a registry "within the time frames provided in RCW 9A.44.140." RCW 9A.44.141(4). That timeframe, for an offender required to register as a result of an out-of-state conviction "continue[s] indefinitely." RCW 9A.44.140(4). *See, also*, RCW 9A.44.141(3) (explaining process to request delisting for offender listed as result of out-of-state conviction). Thus, it is likely that the Legislature intended absolute immunity to apply here, where Vance is claiming the respondents did not properly investigate his claims that he should not have had to register when he arrived in Washington in 1998.

In sum, the trial court order dismissing Vance's claims should be affirmed because, even if the claims were timely, DOC is entitled to quasi-judicial immunity.

C. Even If Vance's Claims Were Timely, And Even If DOC And WSP Had Published His Registration, Both Agencies Are Entitled To Immunity Under RCW 4.24.550(7)

Vance's claims against WSP and DOC are also based on an allegation that these agencies published his registration to the public. Even if Vance's claims were not time-barred, and even if DOC or WSP had published Vance's information, the trial court properly determined that both agencies are immune from suit pursuant to RCW 4.24.550(7). This statute provides in relevant part as follows:

[A] public agency . . . [is] immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that . . . [the] agency acted with gross negligence or in bad faith. . . .

The immunity . . . applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

RCW 4.24.550(7) (titled “Sex offenders and kidnapping offenders—Release of information to public—Web site”).

“Gross negligence” is the failure to exercise even slight care. *Kelley v. State*, 104 Wn. App. 328, 333, 17 P.3d 1189 (2000). “There is no issue of gross negligence without ‘substantial evidence of serious negligence.’” *Id.* (citation omitted). Summary judgment should be granted in favor of the defendant when the plaintiff fails to present sufficient evidence to meet the gross negligence standard. *Id.* at 338.

Vance makes a circular argument that RCW 4.24.550(7) does not apply since he should not have been required to register in the first place. Thus, he contends, the registration information that was released was not “relevant and necessary.” Br. Appellant at 25-28. Vance’s interpretation—that immunity does not apply because he was mistakenly required to register—would render the immunity provision in RCW 4.24.550(7) largely meaningless and nonsensical. If the immunity

provision applied only to situations where no mistake was alleged, where there would be no basis for liability in the first place, the immunity provision would be superfluous.

Vance's situation is exactly what the statute was designed to address. He cannot show that DOC or WSP acted with bad faith or gross negligence. DOC relied on documents that showed his underlying offense involved kidnapping a minor. The documents even contained a description of Vance's admission to the commission of this crime. CP at 263. WSP, meanwhile, simply maintained registration records. No reasonable fact finder could conclude that either agency acted with bad faith or gross negligence. Accordingly, Vance's claims were properly dismissed on this basis.

D. Even If Vance's Claims Were Timely, And Even If No Immunity Applied, Dismissal Was Proper Because Vance Failed To Establish A Triable Issue Of Fact As To Any Of His Claims

Finally, even if this Court were to reach the merits of Vance's claims, dismissal is still proper because Vance failed to meet his burden of establishing the existence of any triable issue of fact.

1. Vance's Negligence Claim Fails Because He Has Not Established The Existence Of A Duty, Much Less A Breach Of Duty, On The Part Of DOC Or WSP

Negligence requires a showing of (1) duty, (2) breach of duty, (3) causation, and (4) damages. *Hutchins v. 1001 Fourth Ave. Assoc.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991). The existence of a duty is a question of law. *Id.*

Presumably, Vance would contend that DOC owed him a duty to refrain from requiring him to register as a kidnapping offender. However, Vance cannot establish a triable issue of fact because DOC did not require him to register, but rather notified Vance of the registration requirement based on documents received from Colorado which showed he kidnapped a minor. DOC cannot be found to be negligent because it did not make the final decision requiring Vance to register, it did not actually register Vance, and it did not have authority to relieve him of the duty to register. *Joyce v. Dep't of Corr.*, 155 Wn.2d 306, 321, n.3, 119 P.3d 825 (2005) (recognizing the “long standing legal principal that when the *authority* to do an act does not exist, the *duty* to do the act also does not exist”).

With regard to WSP, there is no conceivable basis for liability. WSP is required by statute to maintain criminal records it receives from local law enforcement; that was WSP's only role in this case. There is no dispute that WSP received Vance's registration information from Pierce

County Sheriff's Office and Vance cannot offer any legitimate basis for liability.

Accordingly, dismissal of Vance's negligence claims as to both DOC and WSP was proper.

2. Vance's "Gross Negligence And Deliberate Indifference" Claim Fails Because There Is No Evidence Of Gross Negligence And Because He Has Conceded To Dismissal Of His Deliberate Indifference Claim

Vance's gross negligence claim fails for the reasons set out in Section V(C), *supra* at 38-40. The basis of his deliberate indifference claim is not clear. However, Vance represented to the United States District Court that he was not asserting a deliberate indifference claim under the Eighth Amendment to the United States Constitution before the court remanded the action to state court. Accordingly, these claims fail on the merits.

3. Vance's Outrage Claim Fails Because WSP's And DOC's Conduct Comes Nowhere Close To "Extreme" Conduct

Intentional infliction of emotional distress, also known as outrage, requires a showing of (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) severe emotional distress on the part of the plaintiff. *Snyder v. Med. Serv. Corp. of Eastern Wash.*, 98 Wn. App. 315, 321, 988 P.2d 1023 (1999). "The conduct must

be ‘so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’” *Id.* (citation omitted). The standard for an outrage claim is “very high,” and the trial court must first decide whether the alleged conduct is sufficiently extreme prior to allowing an outrage claim to go to a jury. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 51, 59 P.3d 611 (2002).

Here, there is no conduct on the part of DOC or WSP that comes anywhere close to this standard. Again, Vance’s Colorado records showed that he kidnapped a minor and no fact finder could conclude that DOC engaged in outrageous conduct when it notified Vance of the registration requirement. No fact finder could find that WSP’s conduct was outrageous when it maintained Vance’s criminal records. Accordingly, dismissal of this claim was proper.

4. Vance’s Negligent Infliction Of Emotional Distress Fails Because It Is Duplicative Of His Other Claims

A defendant has a duty to avoid the negligent infliction of emotional distress. *Francom v. Costco Wholesale Corp.*, 98 Wn. App. 845, 864-65, 991 P.2d 1182 (2000). Here, Vance is already seeking emotional damages based on a variety of tort theories. Thus, this claim was properly dismissed as duplicative. *Francom*, 98 Wn. App. at 864-65

(dismissing negligent infliction of emotional distress claim as duplicative because it arose from the same facts as the plaintiff's other claim).

5. Vance's Defamation Claim Fails Because There Is No Evidence Of DOC Or WSP Publishing A False Statement, And Even If There Were Such Evidence, The Publication Would Be Privileged

A plaintiff must establish four essential elements to support a defamation claim: falsity, an unprivileged communication, fault, and damages. *Herron*, 109 Wn.2d at 521-22. In this case, since Vance is a private individual as opposed to a public figure, he has the burden of establishing that DOC or WSP was negligent in publishing his information. *Bender v. City of Seattle*, 99 Wn.2d 582, 599, 664 P.2d 492 (1983). Vance's defamation claim fails for two reasons.

First, there is no evidence of DOC or WSP having published a false statement about Vance. It is undisputed that DOC did not publish Vance's registration; DOC is not involved in informing the public about kidnapping offenders. CP at 137, ¶ 6. As discussed in Section V(A)(1), *supra* at 24-27, there is also no evidence of WSP publishing Vance's information. Even if there was such evidence, WSP's publication would have been true because Vance did register as a kidnapping offender with the Pierce County Sheriff's Office.

Second, Vance's defamation claim fails because there is no evidence of an unprivileged communication. In *Bender*, the Washington State Supreme Court found that law enforcement officers have a qualified privilege when releasing information related to a criminal defendant. *Bender*, 99 Wn.2d at 601-02. This privilege applies because DOC and WSP are authorized by statute to disclose information related to registration. RCW 72.09.345(1) (DOC is authorized to release offender information to local law enforcement); RCW 43.43.540 (WSP is authorized to maintain registration information received from local law enforcement).

To overcome the qualified privilege, Vance has the burden of proving by clear and convincing evidence that DOC or WSP abused this privilege because they had knowledge or acted with reckless disregard as to the falsity of published statements. *See Bender*, 99 Wn.2d at 601-02. Vance cannot meet this standard. It is undisputed that DOC received documents from Colorado showing that he kidnapped a minor. While Vance may claim WSP acted recklessly because he notified them by including WSP as a "cc" on a 2008 letter challenging his registration, he cannot show that WSP abused a qualified privilege by not removing him from the registry. This is because WSP lacked authority to unilaterally change its records absent a court order or notice from local law

enforcement indicating that Vance should be removed from the registry. *See, Sec. III(C), supra* at 7-9.

Vance goes so far as to assert that WSP continues to defame him because it still maintains information regarding his arrest for failing to register. Br. Appellant at 41. This would mean that WSP is currently defaming every single resident who has an arrest reported to WSP by local law enforcement when the arrest does not result in conviction. By statute, WSP is required to maintain criminal records it receives from local law enforcement and it is inconceivable that the Legislature intended for WSP to face liability for any arrest record that does not result in conviction. RCW 43.43.500; .540.¹⁵ Not surprisingly, Vance provides no legal authority for his argument that WSP's maintaining of such records constitutes defamation.

In sum, even if the Court reached the merits of Vance's defamation claim, the claim was properly dismissed because Vance fails to prove that an unprivileged, false communication was made to a third party.

¹⁵ Vance's arrest records are not disseminated to the public. *See* RCW 10.97.050(4). This is in contrast to *conviction* records which may be disseminated without restriction. RCW 10.97.050(1). After WSP received the correction notice, Vance was no longer listed as a kidnapping offender in WSP's registry. If a member of the public requests Vance's records, he or she would not obtain information that Vance had previously registered. CP at 172-73, ¶ 8.

6. Vance's Invasion Of Privacy Claim Fails Because There Is No Evidence Of DOC Or WSP Making A Highly Offensive Publication To The Public

An invasion of privacy by publication claim requires a showing of a publication of highly offensive material. *Fisher*, 125 Wn. App. at 878-80. The communication must be to the public at large; publication to a single person or small group does not qualify. *Id.*

Vance's invasion of privacy claim against DOC fails because there is no evidence of DOC communicating any offensive information to the public. As discussed in section V(A)(1), *supra* at 24-27, his invasion of privacy claim against WSP fails for the same reason.

VI. CONCLUSION

For the reasons stated herein, Respondents Department of Corrections and Washington State Patrol respectfully request that the trial court order dismissing Appellant Vance's claims be affirmed.

RESPECTFULLY SUBMITTED this 20th day of January, 2015.

ROBERT W. FERGUSON
Attorney General

s/Eric C. Miller
ERIC C. MILLER, WSBA 41040
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that the Brief of Respondents Washington State Patrol and Department of Corrections was electronically filed with the Court of Appeals as follows:

<http://www.coa2filings@courts.wa.gov>

And that a copy of this document was served on all parties or their counsel of record on the date below as follows:

<u>Party</u>	<u>Method of Service</u>
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I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 20th day of January, 2015, at Tumwater, Washington.

s/Laurel B. DeForest, Legal Assistant

APPENDIX

Laws of 1990, ch.3, §401

Currently codified as RCW 9A.44.130

REGISTRATION OF SEX OFFENDERS

Sec. 401. The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in section 402 of this act.

Laws of 1990, ch 3, §402

Currently codified as RCW 9A.44.130

Sec. 402. A new section is added to chapter 9A.44 RCW to read as follows:

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence.

(2) The person shall, within forty-five days of establishing residence in Washington, or if a current resident within thirty days of release from confinement, if any, provide the county sheriff with the following information: (a) Name; (b) address; (c) place of employment; (d) crime for which convicted; (e) date and place of conviction; (f) aliases used; and (g) social security number.

(3) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within ten days of establishing the new residence. If any person required to register pursuant to this section moves to a new county, the person must register with the county sheriff in the new county within ten days of establishing the new residence. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.

(4) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(5) "Sex offense" for the purpose of sections 402 through 406 of this act means any offense defined as a sex offense by RCW 9.94A.030:

- (a) Committed on or after the effective date of this section; or
 - (b) Committed prior to the effective date of this section if the person, as a result of the offense, is under the custody or active supervision of the department of corrections or the department of social and health services on or after the effective date of this section.
- (6) A person who knowingly fails to register as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Laws of 1990, ch 3, §117

Currently codified as RCW 4.24.550

Sec. 117. A new section is added to chapter 4.24 RCW to read as follows:

(1) Public agencies are authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

(2) An elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The authorization and immunity in this section applies to information regarding: (a) A person convicted of, or juvenile found to have committed, a sex offense as defined by RCW 9.94A.030; (b) a person found not guilty of a sex offense by reason of insanity under chapter 10.77 RCW; (c) a person found incompetent to stand trial for a sex offense and subsequently committed under chapter 71.05 or 71.34 RCW; (d) a person committed as a sexual psychopath under chapter 71.06 RCW; or (e) a person committed as a sexually violent predator under sections 1001 through 1012 of this act. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(3) Except as otherwise provided by statute, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information as provided in subsection (2) of this section.

(4) Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as otherwise provided by statute.

Laws of 1997, ch. 113, §3

Currently codified as RCW 9A.44.130

Sec. 3. RCW 9A.44.130 and 1996 c 275 s 11 are each amended to read as follows:

WA ST 9A.44.130

(1) Any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence.

(2) The person shall provide the county sheriff with the following information when registering: (a) Name; (b) address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) aliases used; and (h) social security number.

(3)(a) Sex Offenders shall register within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) SEX OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after the effective date of this act are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, >>> must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the sex offender of the duty to register. Failure to register within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(ii) SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on the effective date of this act, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or

a local division of youth services, for kidnapping offenses committed before, on, or after the effective date of this act must register within ten days of the effective date of this act. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of the effective date of this act shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) SEX OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after the effective date of this act, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after the effective date of this act, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on the effective date of this act, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after the effective date of this act must register within ten days of the effective date of this act. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of the effective date of this act shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after the effective date of this act for a kidnapping offense that was committed on or after the effective date of this act, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to

register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after the effective date of this act. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) SEX OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after the effective date of this act and who on or after the effective date of this act is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released prior to or before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before the effective date of this act, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released prior to or before July 23, 1995, and kidnapping offenders who were released before the effective date of this act. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (7) of this section.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (7) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register

immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff at least fourteen days before moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. If any person required to register pursuant to this section moves out of Washington state, the person must also send written notice within ten days of moving to the new state or a foreign country to the county sheriff with whom the person last registered in Washington state.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(5) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(6) "Sex offense" For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330

(a) "Sex offense" means any offense defined as a sex offense by RCW 9.94A.030 and any violation of RCW 9.68A.040 (sexual exploitation of a minor), 9.68A.050 (dealing in depictions of minor engaged in sexually explicit conduct), 9.68A.060 (sending, bringing into state depictions of minor engaged in sexually explicit conduct), 9.68A.090 (communication with minor for immoral purposes), 9.68A.100 (patronizing juvenile prostitute), or 9A.44.096 (sexual misconduct with a minor in the second degree), as well as any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030.

(b) "Kidnapping offense" means the crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent.

(7) A person who knowingly fails to register or who moves without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony. If the crime was other than a class A felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a class A felony, violation of this section is a gross misdemeanor.

Laws of 1997, ch. 113, §1

Currently codified as RCW 9A.44.130

Sec. 1. The legislature finds that offenders who commit kidnapping offenses against minor children pose a substantial threat to the well-being of our communities. Child victims are especially vulnerable and unable to protect themselves. The legislature further finds that requiring sex offenders to register has assisted law enforcement agencies in protecting their communities. Similar registration requirements for offenders who have kidnapped or unlawfully imprisoned a child would also assist law enforcement agencies in protecting the children in their communities from further victimization.

Laws of 1997, ch. 113, §3

Currently codified as RCW 9A.44.130(3)(a)(v)

(v) SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after the effective date of this act. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social

and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

Laws of 1997, ch. 113, §5

Currently codified as RCW 10.01.200

Sec. 5. RCW 10.01.200 and 1990 c 3 s 404 are each amended to read as follows:

WA ST 10.01.200

The court shall provide written notification to any defendant charged with a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant.

Laws of 1997, ch. 113 §8

Currently codified as RCW 72.09.330(2)

Sec. 8. RCW 72.09.330 and 1990 c 3 s 405 are each amended to read as follows:

WA ST 72.09.330

(1) The department shall provide written notification to an inmate convicted of a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgement of receipt.

(2) The department shall provide written notification to an individual convicted of a sex offense or kidnapping offense from another state of the registration requirements of RCW 9A.44.130 at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270.

Laws of 1990, ch. 3, §403

Currently codified as RCW 43.43.540

Sec. 403. A new section is added to chapter 43.43 RCW to read as follows:

The county sheriff shall forward the information and fingerprints obtained pursuant to section 402 of this act to the Washington state patrol within five working days. The state patrol shall maintain a central registry of sex offenders required to register under section 402 of this act and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of sections 402 through 408 of this act. The Washington state patrol shall reimburse the counties for the costs of processing the sex offender registration, including taking the fingerprints and the photographs.

Laws of 1998, ch. 139, §2

Currently codified as RCW 9A.44.145

Sec. 2. A new section is added to chapter 9A.44 RCW to read as follows:

The state patrol shall notify registered sex and kidnapping offenders of any change to the registration requirements.

Laws of 2002, ch. 118, §2

Currently codified as RCW 43.43.540(1)

Sec. 2. RCW 43.43.540 and 1998 c 220 s 4 are each amended to read as follows:

WA ST 43.43.540

The county sheriff shall (1) forward the information, photographs, and fingerprints obtained pursuant to RCW 9A.44.130, including any notice of change of address, to the Washington state patrol within five working days; and (2) upon implementation of RCW 4.24.550(5)(a), forward any information obtained pursuant to RCW 9A.44.130 that is necessary to operate the registered sex offender web site described in RCW 4.24.550(5)(a) to the Washington association of sheriffs and police chiefs within five working days of receiving the information, including any notice of change of address or change in risk level notification. The state patrol shall maintain a central registry of sex offenders and kidnapping offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the offender registration, including taking the fingerprints and the photographs.

Laws of 2002, ch. 118, §1

Currently codified as RCW 4.24.550(5)

CHAPTER 118

S.S.B. No. 6488

PUBLIC AGENCIES—REGISTERED SEX OFFENDER WEB SITE

AN ACT Relating to a statewide registered sex offender web site; amending RCW 43.43.540; reenacting and amending RCW 4.24.550; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec.1. RCW 4.24.550 and 2001 c 283 s 2 and 2001 c 169 s 2 are each reenacted and amended to read as follows:

WA ST 4.24.550

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders, level I registered sex offenders during the time they are out of compliance with registration requirements under RCW 9A.44.130, and all registered kidnapping offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, and address by hundred block.

(ii) For level II offenders, and level I sex offenders during the time they are out of compliance with registration requirements under RCW 9A.44.130, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(iii) For kidnapping offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

Laws of 1990, ch 3, §408

Currently codified as RCW 9A.44.130

Sec. 408. A new section is added to chapter 9A.44 RCW to read as follows:

(1) The duty to register under section 402 of this act shall end:

(a) For a person convicted of a class A felony: Such person may only be relieved of the duty to register under subsection (2) of this section.

(b) For a person convicted of a class B felony: Fifteen years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent fifteen consecutive years in the community without being convicted of any new offenses.

(c) For a person convicted of a class C felony: Ten years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses.

(2) Any person having a duty to register under section 402 of this act may petition the superior court to be relieved of that duty. The petition shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register, or, in the case of convictions in other states, to the court in Thurston county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction, and may consider other factors. The court may relieve the petitioner of the duty to register only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of sections 402 through 408 of this act.

(3) Unless relieved of the duty to register pursuant to this section, a violation of section 402 of this act is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

(4) Nothing in RCW 9.94A.220 relating to discharge of an offender shall be construed as operating to relieve the offender of his or her duty to register pursuant to section 402 of this act.

Laws of 1937, ch. 92, §1

Currently codified as RCW 9.95.270

The contracting states solemnly agree:

- (1) That it shall be competent for the duly constituted judicial and administrative authorities of a state, party to this compact, (herein called “sending state”), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called “receiving state”), while on probation or parole, if
- (a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;
- (b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

Laws of 2001, ch. 35, §2

Currently codified as RCW 9.94A.745

CHAPTER 35

S.S.B. No. 5118

CRIMINAL PROCEDURE—INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

AN ACT Relating to the interstate compact for adult offender supervision; adding new sections to chapter 9.94A RCW; creating a new section; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** This act shall be known and may be cited as the “interstate compact for adult offender supervision.”

NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW to read as follows:

The interstate compact for adult offender supervision is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I

PURPOSE

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this

compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article IV of this compact.

(n) "Victim" means a person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of criminal conduct against the person or a member of the person's family.

ARTICLE III

THE COMPACT COMMISSION

(a) The compacting states hereby create the "interstate commission for adult offender supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein; including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee oversees the day-to-day activities managed

by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV

THE STATE COUNCIL

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims' groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

- (a) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;
- (b) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- (c) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;
- (d) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;
- (e) To establish and maintain offices;
- (f) To purchase and maintain insurance and bonds;
- (g) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;
- (h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
- (i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;
- (j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;
- (k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;
- (l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (m) To establish a budget and make expenditures and levy dues as provided in article X of this compact;
- (n) To sue and be sued;
- (o) To provide for dispute resolution among compacting states;

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(q) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(r) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity;

(s) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) **Bylaws.** The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary, providing reasonable standards and procedures:

(i) For the establishment of committees, and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for “start up” administration of the compact;

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) **Officers and staff.** (1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice-chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: PROVIDED, That subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

(c) **Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

(d) **Qualified immunity, defense and indemnification.** (1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That nothing in this subsection (d)(1) shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: PROVIDED, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of

interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the “government in sunshine act,” 5 U.S.C. Sec. 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

- (1) Relate solely to the interstate commission's internal personnel practices and procedures;
- (2) Disclose matters specifically exempted from disclosure by statute;
- (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
- (4) Involve accusing any person of a crime, or formally censuring any person;
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (6) Disclose investigatory records compiled for law enforcement purposes;
- (7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;
- (8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;
- (9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII

RULE MAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C. Sec. 551 et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule making record. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside.

(e) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) Notice to victims and opportunity to be heard;

(2) Offender registration and compliance;

(3) Violations/returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

- (7) Data collection and reporting;
 - (8) The level of supervision to be provided by the receiving state;
 - (9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;
 - (10) Mediation, arbitration and dispute resolution.
- (f) The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.
- (g) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

- (a) **Oversight.** (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.
- (2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.
- (b) **Dispute resolution.** (1) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.
- (2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states. The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) **Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII (b) of this compact.

ARTICLE X

FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate

in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) **Withdrawal.** (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: PROVIDED, That a compacting state may withdraw from the compact (“withdrawing state”) by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** (1) If the interstate commission determines that any compacting state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(ii) Remedial training and technical assistance as directed by the interstate commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to

the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) **Judicial enforcement.** The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(d) **Dissolution of compact.** (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) **Other laws.** (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

(2) The department shall provide written notification to an individual convicted of a sex offense or kidnapping offense from another state of the registration requirements of RCW 9A.44.130 at

the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270.

WASHINGTON STATE ATTORNEY GENERAL

January 20, 2015 - 3:20 PM

Transmittal Letter

Document Uploaded: 5-465329-Respondents' Brief.pdf

Case Name: Vernon Paul Vance v. Pierce County, et ux., et al.

Court of Appeals Case Number: 46532-9

Is this a Personal Restraint Petition? Yes No

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Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

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Motion: _____

Answer/Reply to Motion: _____

Brief: Respondents'

Statement of Additional Authorities

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Objection to Cost Bill

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Letter

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Personal Restraint Petition (PRP)

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Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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Comments:

Brief of Respondents Washington State Department of Corrections and Washington State Patrol

Sender Name: Laurel B Deforest - Email: laureld@atg.wa.gov

A copy of this document has been emailed to the following addresses:

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